

Amendment under 37 CFR § 1.116
Application No. 10/519,802
Attorney Docket No. 043061

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REMARKS

Allowable Claims

Applicant gratefully acknowledges that claims 5, 6, and 9 were merely objected to as depending from a rejected base claim, but are otherwise allowable.

Objection to Claims

Claim 1 was objected to because of informalities. Claim 1 has been amended to correct the informalities.

Rejections under 35 USC §102(b)

Claim 2 was rejected under 35 USC §102(b) as being anticipated by Meelu (U.S. Patent No. 6,299,986).

Responding to Applicant's previous response, the Examiner alleged as follows:

Applicant argues that the heat generating members of the articles of Meelu were not made by diffusion of Re and Cr therein. Applicant points out that Meelu describes Meelu's substrates as having a higher Re content than the barrier coating, which is contrary to what would be expected after a diffusion treatment. However, the claim merely refers to Re and Cr "diffused therein." **The presence of a gradient in Re concentration is not a claimed feature** and hence is not a required element in the prior art article. For the purposes of finding an anticipatory teaching, the presence of Re and Cr in the substrate material teaches the claimed feature.

Amendment under 37 CFR § 1.116
Application No. 10/519,802
Attorney Docket No. 043061

Claim 2 has been amended to recite "a heat-generation element member made of an alloy containing a platinum-group metal or refractory metal, and Re and Cr diffused therein, a peripheral portion having higher Re concentration than a central portion in a cross section of said heat-generation element member."

In Meelu, the barrier coating comprises an alloy having a lower rhenium content than the high rhenium-containing superalloy article (col. 2, lines 43-52).

Thus, Meelu does not teach or suggest, among other things, "a heat-generation element member made of an alloy containing a platinum-group metal or refractory metal, and Re and Cr diffused therein, a peripheral portion having higher Re concentration than a central portion in a cross section of said heat-generation element member."

Moreover, according to Meelu, the platinum is deposited onto the barrier coating on the high rhenium-containing superalloy article (col.2, line 66 to Col. 3, line s 39-57). In contrast, according to the present invention, the heat-generation element member may be made of an alloy containing a platinum-group metal but platinum is not deposited onto the barrier coating.

For at least these reasons, claim 2 patentably distinguishes over Meelu.

Rejections under 35 USC §103(a)

Claims 1-4, 7, and 8 were rejected under 35 USC §103(a) as being obvious over Narita et al. (WO 03/038152).

Amendment under 37 CFR § 1.116
Application No. 10/519,802
Attorney Docket No. 043061

Narita et al WO 03/038152 was published on May 8, 2003. The international application of the present application was filed on June 30, 2003. Therefore, Narita et al is not 102(b) prior art but can be 102(a) or (e) prior art.

Also, the present application claims priority of Japanese Application 2002-191587 filed on July 1, 2002, which is the constructive-reduction-to-practice date of the present invention. This date is earlier than the publication date of WO 03/038152. Also, Narita et al invention was not known or used in this country. Therefore, Narita et al is 102(e) prior art, but not 102(a) prior art. The provision of 35 USC 102 reads as follows:

(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, **except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;**

Narita et al was published in Japanese, i.e., **was NOT “published under Article 21(2) of such treaty in the English language.”** Therefore, Narita et al has no 102(e) date at all. See MPEP 706.01(f)(1). Thus, Narita et al is not prior art and it cannot be used for the 103(a) rejection.

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Application No. 10/519,802
Attorney Docket No. 043061

For at least these reasons, the 35 USC §103(a) rejection of claims 1-4, 7, and 8 is improper and should be withdrawn.

In view of the aforementioned amendments and accompanying remarks, Applicants submit that the claims, as herein amended, are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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